Supreme Court, U.S.
FILED
AUG 14 2006
OFFICE OF THE CLERK

No. 06-225

IN THE

Supreme Court of the United States

October Term, 2005

PETER PAUL MITRANO,

Petitioner,

versus

VIRGINIA L. KELLY,

Respondent.

On Petition for a Writ of Certiorari to the
Supreme Court of the State of New Hampshire

PETITION FOR WRIT OF CERTIORARI

Peter Paul Mitrano
Pro se
4912 Oakcrest Drive
Fairfax, Virginia 22030

Petitioner

August 2006

Questions Presented for Review

1. Under the logic of our Declaration of Independence, which justified our revolution against the King of Great Britain, does a United States citizen have a lawful right to start a revolution when his constitutional rights to access to the courts are in essence denied?

2. Have the nonexistence of the rights of common and honest United States citizens (for all practical purposes) made in essence a "full circle" within our present court system when compared to the complaints stated in our Declaration of Independence?

3. Should the violations of the constitutional rights of petitioner be compounded by now taking away his property on top of the previous violations of the constitutional rights of petitioner by in essence taking away his children?

4. Does a court of limited and inferior jurisdiction have the authority to take away the property of petitioner under the pretext of a void judgment thereby depriving him due process?

5. Do the jurisdictional requirements of Title 28 U.S.C., § 1738A supercede the determination of subject-matter jurisdiction by a state court of limited and inferior jurisdiction?

6. Does the Supreme Court of the State of New Hampshire have the authority to arbitrarily and capriciously dismiss an appeal under the pretext it does not like the look of the typeface of a brief that conforms to the rules of said Supreme Court of the State of New Hampshire?

Parties to the Proceeding

The caption of this case in this Supreme Court of the United States contains the names of all parties before the Supreme Court of the State of New Hampshire except that the Supreme Court of the State of New Hampshire referred to Virginia L. Kelly as Virginia L. Mitrano. Note that the trial court referred to Virginia L. Kelly as Virginia L. Kelly. No party is a parent, subsidiary or affiliate of any company.

Table of Contents

Questions Presented i

Parties to Proceedings ii

Table of Authorities iv

Opinions Below 1

Jurisdiction 1

Constitutional Provisions and Statutes Involved 2

Statement of the Case 2

Reasons for Granting the Petition 3

The New Hampshire Custody Order is Void 13

The Dismissal by the New Hampshire Supreme Court was Arbitrary and Capricious 28

Conclusion 30

Appendices

Order of the Supreme Court of the State of New Hampshire A-1

Order of the Lebanon Family Court, Lebanon, New Hampshire . . A-3

Table of Authorities

American Communications Ass'n, C.I.O. v. *Douds*, 339 U.S. 382 (1950) 12
Badwell v. *Brooks*, 141 N.H. 508, 686 A.2d 1179 (1996) 25
Clarke v. *Clarke*, 126 N.H. 753, 496 A.2d 361 (1985) 22
Cohen v. *Commonwealth of Virginia*, 19 U.S. 264 (1821) 10
Coleman Bros. Corp. v. *City of Franklin*, 58 F.Supp. 551 (N.H. 1945) 17-19
Coleman v. *Thompson*, 501 U.S. 722 (1991) . . . 13
Durfee v. *Duke*, 375 U.S. 106 (1963) . . . 18
Eichelberger v. *Eichelberger*, 2 Va.App. 409, 345 S.E.2d 10 (1986) 25
Elliott v. *Peirsol's Lessee*, 26 U.S. 328 (1828) . . 13
Ex Parte Raywood, 549 So.2d 103 (Ala. 1989) . 27
Ford v. *Georgia*, 498 U.S. 411 (1991) . . . 28
Frank v. *Mangum*, 237 U.S. 309 (1915) . . . 16
Galpin v. *Page*, 85 U.S. 350 (1873) 15
Grignon's Lessee v. *Astor*, 43 U.S. 319 (1844) 18-19
Heins v. *Heins*, 783 S.W.2d 481 (Mo.Ct.App. 1990) 28
Howard v. *Howard*, 124 N.H. 267, 469 A.2d 1318 (1983) 22
In re Anastaplo, 366 U.S. 82 (1961) 11-12
In re James, 940 F.2d 46 (3rd Cir. 1991) . . . 13
Joel M. v. *Karen M.*, 507 N.Y.S.2d 369 (1986). . 26
Johnson v. *Johnson*, 26 Va. App. 135, 493 S.E.2d 668 (1997) 23
Johnson v. *Zerbst*, 304 U.S. 458 (1938) . . . 16
Kalb v. *Feuerstein*, 308 U.S. 433 (1940). . . 16, 25
Kiluk v. *Potter*, 133 N.H. 67, 572 A.2d 1157 (1990) 15

Table of Authorities

Lynk v. *LaPorte Superior Court No. 2*, 789 F.2d 554 (7th Cir. 1986) 27
Matter of Adoption of Child by T.W.C., 636 A.2d 1083 (N.J. 1994) 23
Matter of Guardianship of Walling, 727 P.2d 586 (Okl. 1986) 24
Mebert v. *Mebert*, 444 N.Y.S.2d 834 (1981). . . . 26
McCormick v. *Sullivant*, 23 U.S. 192 (1825). . . . 17
Moore v. *Dempsey*, 261 U.S. 86 (1923). . . . 16, 27
National Ass'n for Advancement of Colored People v. *State of Ala., ex rel. Patterson*, 357 U.S. 449 (1958) 30
National Ass'n for Advancement of Colored People v. *Alabama ex rel. Flowers*, 377 U.S. 288 (1964) 29
Neger v. *Neger*, 93 N.J. 15, 459 A.2d 628 (1983) 23
Patterson v. *Patterson*, 306 F.3d 1156 (1st Cir. 2002) 18
Parrot v. *City of Tallahassee, Fla.*, 381 U.S. 129 (1965) 29
Robins Island Preservation Fund, Inc. v. *Southold Development Corp.*, 959 F.2d 409 (2nd Cir. 1992) 12
Sherrer v. *Sherrer*, 334 U.S. 343 (1948) 17
Sherry Ann F. v. *Bennet S.*, 131 Misc.2d 854, 502 N.Y.S.2d 383 (Fam.Ct., Scho.Co., 1986) 26-27
Smith v. *Smith*, 341 Ark. 590, 19 S.W.3d 590 (2000) 28
St. Andrie v. *St. Andrie*, 473 So.2d 140 (La. 1985) 23
State v. *Bushoug*, 109 N.E.2d 692 (Ohio 1951). 17

Table of Authorities

State v. *Flynn*, 110 N.H. 451, 272 A.2d 591 (1970) 15
State v. *Moquin*, 105 N.H. 9, 191 A.2d 541 (1963) 18
Thompson v. *Thompson*, 484 U.S. 174 (1988). . 25
Thompson v. *Tolmie*, 27 U.S. 157 (1829). 13
Thompson v. *Whitman*, 85 U.S. 457 (1873) 14-15, 17

Other Authorities:

32 Family Law Quarterly 267 (1998) . . 22, 24-25
45 Hastings L.J. 1329 (July 1994) 23
Restatement, Second, Judgments (1982) § 11, comment b, and § 12, comment e 14
Section 20-108 of the Code of Virginia. 21
The Bootstrap Principle, 53 Va. Law Rev. 1241 (1967) 14
The Fourteenth Amendment of the Constitution of the United States 2
The Fifth Amendment of the Constitution of the United States 2
The Sixth Amendment of the Constitution of the United States 16
Title 28 U.S.C., § 1257(a) 1
Title 28 U.S.C., § 1257 13
Title 28 U.S.C., § 1738A (passim) throughout
Title 28 U.S.C., § 1738A (b)(4) 19
Title 28 U.S.C., § 1738A (c)(2)(A) 23-24
Title 28 U.S.C., § 1738A (c)(2)(A)(i) 20
Title 28 U.S.C., § 1738A (c)(2)(A)(ii) 20, 25
Title 28 U.S.C., § 1738A (c)(2)(E) 21
Title 28 U.S.C., § 1738A (d) 21, 24
Title 28 U.S.C., § 1738A (e) 21, 26
Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA) 22, 25

IN THE

Supreme Court of the United States

October Term, 2005

PETER PAUL MITRANO,

Petitioner,

v.

VIRGINIA L. KELLY,

Respondent.

Peter Paul Mitrano, *pro se*, respectfully petitions for a writ of certiorari to review the judgment of the Supreme Court of the State of New Hampshire in this case.

Opinion Below

The judgment of the Supreme Court of the State of New Hampshire from which petitioner seeks certiorari appears in the Appendix hereto at page A-1. The judgment of Lebanon Family Court, Lebanon, New Hampshire ("trial court") appears at page A-3. All lower court decisions are officially unreported.

Jurisdiction

The decision of the Supreme Court of the State of New Hampshire was entered on May 17, 2006. (A-1) This petition for writ of certiorari was filed within ninety days of said date of May 17, 2006. This Court's jurisdiction is invoked under 28 U.S.C., § 1257(a).

Constitutional Provisions and Statutes

The Fifth and Fourteenth Amendments and Title 28 U.S.C., § 1738A.

Statement of the Case

This case arises from an action filed by respondent, Virginia L. Kelly (hereinafter sometimes referred to as "Kelly" and/or "mother"), against petitioner Peter Paul Mitrano (hereinafter sometimes referred to as "Mitrano" and/or "father") for execution of an alleged judgment for child support payments and other monies. The petitioner contends that the alleged judgment for child support and other monies is void. The trial court granted execution as requested by the respondent Kelly. (A-3—A-6) The Supreme Court of the State of New Hampshire dismissed the appeal on procedural grounds. (A-1)

The father has been denied the right to see his son Christopher since January 5, 2001 when the respondent Kelly took the child from Fairfax, Virginia for an alleged visitation on Friday, January 5, 2001 and failed to return the child on the following Monday, January 8, 2001.

As difficult as this matter has been since January 5, 2001 when the father last saw his son Christopher (note litigation commenced in 2000 and further note that a daughter reached the age of majority on October 4, 2003 and that an older son reached the age of majority on December 27, 2004), the father continues to pursue this matter in part in the hopes of sending a message on behalf of other parents.

Reasons for Granting the Petition

With all due respect, we have reached the time in the history of the United States of America in which it is necessary for this Supreme Court to remind the lower courts in plain English that one of the purposes of the lower courts is to hear the cases brought before them. With all due respect, this Supreme Court should explain in plain English that this means that the lower courts should facilitate the parties in resolving their disputes in a peaceful manner and not find a pretext to throw the cases out of court. With all due respect, this Supreme Court should in plain and direct English remind our country and our lower courts that the alternative to the peaceful resolution of our differences through our courts is the right of the citizens of the United States of America to start a lawful revolution. Note that on page 2 of the Peter Paul Mitrano's Motion to Stay Execution filed before the trial court, it is stated:

> ". . . is 'the right to revolution under the logic of our Declaration of Independence' when the court's doors are closed".

Sadly, the present question of the day is not how much justice is a citizen of the United States of America entitled to receive, but how much justice is a citizen of the United States of America able to afford? More sadly is that the various procedural rules of the courts are for all practical terms often used to keep citizens of the United States of America out of court. With all due respect, this Supreme Court is able to take judicial notice of the fact that all prior empires throughout history

have at some point failed. While some may argue that the United States of America is never going to fail, it is most important that this country by and through this Honorable Supreme Court reflect and consider whether our present system of justice is serving the citizens of the United States of America in the manner that our forefathers envisioned. While the economy of our country presently proceeds under the basic economic rules of supply and demand, it is necessary for this Supreme Court to rule that the lower courts are to protect citizens of the United States of America and not subject the administration of justice to the sometimes vulgar and sometimes uncompassionate economic rules of supply and demand. This logic happens to coincide with the principle that all men (and women) are equal under the law. Instead of showing distain for the common and honest citizen proceeding without the additional cost of legal counsel (or in legal terms "*pro se*"), the lower courts should be respectfully directed by this Supreme Court to facilitate and hear the cases of the common and honest citizen proceeding without the additional cost of legal counsel. For whatever reasons, the economic reality of the present day is that too many citizens of the United States of America are simply priced out of our system of justice. Even in a civil action, this Supreme Court is able to take judicial notice that it is most difficult to proceed without the benefit of expensive legal services. The undersigned contends that this situation will over time destroy one of the basic rights of the citizens of the United States of America and result in more unrest

among the less connected citizens of the United States of America. The bottom line is what good is a legal system that the common and honest citizens of the United States of America cannot afford to utilize?

Now is the time to ask ourselves: have we now come full circle wherein the revolution fought so bravely by our forefathers was for naught in that we are now exposed to the tyranny that our forefathers gave up their lives to stop?

Let us not forget that over 231 years ago, on April 19, 1775, our forefathers began a revolution against the King of Great Britain in order to protect the rights and liberties of the present citizens of the United States of America. It is most important to reflect upon the reasons proclaimed in this Country's Declaration of Independence that was adopted on July 4, 1776:

> "When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the Powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.
>
> "We hold these truths to be self-evident, that **all men are created equal**, that they are endowed by their Creator with certain unalienable Rights, that among these are Life,

Liberty and the pursuit of happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its power in such form, as to them shall seem most likely to effect their Safety and Happiness. Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shown, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same Object, evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security. —Such has been the patient sufferance of these Colonies; and such is now the necessity which constrains them to alter their former Systems of Government. The history

of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States. To prove this, let Facts be submitted to a candid world.

"He has refused his Assent to Laws, the most wholesome and necessary for the public good.

. . .

"He has called together legislative bodies . . . for the sole purpose of fatiguing them into compliance with his measures.

. . .

"He has endeavoured to prevent the population of these States; for that purpose obstructing the Laws of Naturalization of Foreigners; refusing to pass others to encourage their migrations hither, and raising the conditions of new Appropriations of Lands.

"**He has obstructed the Administration of Justice**, by refusing his Assent to Laws for establishing Judiciary Powers.

"He has made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries.

"He has erected a multitude of New Offices, and sent hither swarms of Officers to harass our People, and eat out their substance.

"He has kept among us, in times of peace, Standing Armies without the Consent of our legislature.

"He has affected to render the Military independent of and superior to the Civil Power.

"He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his Assent to their Acts of pretended Legislation; For quartering large bodies of armed troops among us; For protecting them, by a mock Trial, from punishment for any Murders which they should commit on the inhabitants of these States; For cutting off our Trade with all parts of the world, **For imposing taxes on us without our Consent**; **For depriving us in many cases, of the benefits of Trial by Jury** . . .

. . .

"He is at this time transporting large armies of foreign mercenaries to compleat the works of death, desolation and tyranny, already begun with circumstances of Cruelty and perfidy scarcely paralleled in the

> most barbarous ages, and totally unworthy the Head of a civilized nation.
>
> . . .
>
> "He has excited domestic insurrections amongst us . . . We have warned them from time to time of attempts by their legislature to extend an unwarrantable jurisdiction over us . . . We have appealed to their native justice and magnanimity, and we have conjured them by the ties of our common kindred to disavow these usurpations, which would inevitably interrupt our connections and correspondence. They too have been deaf to the voice of justice and of consanguinity . . .
>
> ". . . And for the support of this Declaration, with a firm reliance on the Protection of Divine Providence, we mutually pledge to each other our Lives, our Fortunes, and our sacred Honor." (Bold emphasis added.)

Again, now over 230 years later, have we come full circle wherein the revolution fought so bravely by our forefathers was for naught in that we are now exposed to the tyranny that our forefathers gave up their lives to stop?

The undersigned respectfully asks this Supreme Court to reflect upon the words of our forefathers. Does this Supreme Court accept that the rich and connected do not seem to have

enough time and money for the poor and unconnected? Could the "Empire of the United States of America" be substituted for the "King of Great Britain"? Instead of violating the fundamental rights of the undersigned and his children, should this Supreme Court stop and reflect upon the damage caused to the undersigned and his children? Should this Supreme Court and the respondent give any thought to the above-quoted words? Whatever happened to the "sacred Honor" our forefathers pledged to their fellow citizens of the United States of America? Moreover, the phrase "without justice, there will not be peace" applies in the United States of America. We cannot systemically and continually deny justice and/or access to justice to the poor and unconnected and expect peace in the United States of America.

While the undersigned believes that the facts of this matter justify a revolution, the undersigned appreciates that this Supreme Court has the power to rectify some of the wrongs committed by the lower courts and the respondent. Note that over 185 years ago, Chief Justice Marshall stated words that ring as true today as they did then in *Cohen* v. *Commonwealth of Virginia*, 19 U.S. 264, 404 (1821):

> "'. . .We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the Constitution . . . .'"

Also note the words of Justice Black in a dissenting opinion in the case of *In re Anastaplo*, 366 U.S. 82, 112, 113 (1961), wherein it is stated:

> ". . . But the men who founded this country and wrote our Bill of Rights were strangers neither to a belief in the 'right of revolution' nor to the urgency of the need to be free from the control of government with regard to political beliefs and associations. Thomas Jefferson was not disclaiming a belief in the 'right of revolution' when he wrote the Declaration of Independence. And Patrick Henry was certainly not disclaiming such a belief when he declared in impassioned words that have come on down through the years: 'Give me liberty or give me death.' This country's freedom was won by men who, whether they believed in it or not, certainly practiced revolution in the Revolutionary War.
>
> "Since the beginning of history there have been governments that have engaged in practices against the people so bad, so cruel, so unjust and so destructive of the individual dignity of men and women that the 'right of revolution' was all the people had left to free themselves. As simple illustrations, one government almost 2,000 years ago burned Christians upon fiery crosses and another

> government, during this very century, burned Jews in crematories. I venture the suggestion that there are countless multitudes in this country, and all over the world, who would join Anastaplo's belief in the right of the people to resist by force tyrranical governments like those."

Note also in *American Communications Ass'n, C.I.O.* v. *Douds*, 339 U.S. 382, 439 (1950) Justice Jackson stated in a concurring and dissenting opinion that:

> ". . . [W]e cannot ignore the fact that our own Government originated in revolution and is legitimate only if overthrow by force may sometimes be justified. That circumstances sometimes justify it is not Communist doctrine but an old American belief." (Footnote omitted.)

Also see *Robins Island Preservation Fund, Inc.* v. *Southold Development Corp.*, 959 F.2d 409, 411 (2nd Cir. 1992) wherein it is stated:

> "This action brought by RIPF requires us to revisit the events surrounding our nation's birth in revolution. However, the events of the American Revolution which we must consider are not widely celebrated today. These events relate to the systematic confiscation of property belonging to those Americans who refused to join the Revolution . . . ."

The New Hampshire Custody Order is Void

The respondent Kelly is attempting to take away the property of petitioner Mitrano under the pretext of a void custody order. The underlying custody order from the State of New Hampshire is void. See *Elliott* v. *Peirsol's Lessee*, 26 U.S. 328, 340 (1828) ("But, if it act without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void"); and, *Thompson* v. *Tolmie*, 27 U.S. 157, 169 (1829). Also see *In re James*, 940 F.2d 46, 52 (3rd Cir. 1991). Note as this Supreme Court stated in *Coleman* v. *Thompson*, 501 U.S. 722, 730 (1991):

> ". . . When this Court reviews a state court decision on direct review pursuant to 28 U.S.C. § 1257 it is reviewing the *judgment*; if resolution of a federal question cannot affect the judgment, there is nothing for the Court to do . . . ."

Accordingly, the petitioner will address the federal questions herein. The federal law (28 U.S.C. § 1738A) pre-empts the state law in analyzing the instant action. This means that even if the district court (Lebanon, New Hampshire) in the State of New Hampshire makes a ruling that violates 28 U.S.C. § 1738A, it does not matter if the courts in the State of Vermont and/or the Commonwealth of Virginia agree with said district court in the State of New Hampshire, the federal law stated in 28 U.S.C. § 1738A supercedes any conflicting state court decisions. Because said trial court in the State of New Hampshire is only a court of limited and inferior jurisdiction, its

decisions and/or rulings made when 28 U.S.C. § 1738A clearly states that said trial court in the State of New Hampshire does not have jurisdiction, are void. As a result of said trial court in the State of New Hampshire issuing decisions and/or rulings that are void, it does not matter whether the courts in the State of Vermont and/or Commonwealth of Virginia state that the same are not void. A void judgment cannot be resurrected by the courts in the State of Vermont and/or Commonwealth of Virginia; a void judgment stays void. One State cannot through the "Bootstrap Principle" bootstrap another State's void judgment into a valid judgment. See 53 Va. Law Rev. 1241, 1247 (1967), *The Bootstrap Principle*, wherein it is stated:

> ". . . A court does not have power to determine its own jurisdiction merely because the Supreme Court wishes it to be so; it has that power only if the legislature or constitution 'wishes' it to be so . . .
>
> ". . . The legislature might not intend a court of inferior jurisdiction to have the power to determine its own jurisdiction . . . ."

Thus, any attempt by other states to in essence "double bootstrap" the void judgment of the trial court in New Hampshire into any form of legitimacy should not be allowed by this Supreme Court. Also see Restatement, Second, Judgments (1982) § 11, comment b, and § 12, comment e.

In *Thompson* v. *Whitman*, 85 U.S. 457, 469 (1873), this Supreme Court stated in a case filed

in federal court in the State of New York challenging the subject-matter jurisdiction of justices of the peace in a State of New Jersey state court action that:

> "On the whole, we think it clear that the jurisdiction of the court by which a judgment is rendered in any State may be questioned in a collateral proceeding in another State, notwithstanding the provision of the fourth article of the Constitution and the law of 1790, and notwithstanding the averments contained in the record of the judgment itself."

Thus, a reading of *Thompson* v. *Whitman*, clearly supports petitioner's position that a void judgment from the state courts of the State of New Hampshire may be attacked. Again, an important fact is that the state court in the State of New Hampshire in the instant case was a court of limited and inferior authority. See *State* v. *Flynn*, 110 N.H. 451, 453, 272 A.2d 591, 593 (1970) and *Kiluk* v. *Potter*, 133 N.H. 67, 68-70, 572 A.2d 1157, 1158 (1990).

In *Galpin* v. *Page*, 85 U.S. 350, 365-366 (1873) which was decided in the same year as *Thompson* v. *Whitman*, this Supreme Court further explained that there is a different standard applied when a court of general jurisdiction makes a determination with respect to its jurisdiction as opposed to a court of limited and inferior authority such as the subject state court in the State of New Hampshire and stated:

> ". . . The rule is different with respect to courts of special and limited authority; as to them there is no presumption of law in favor of their jurisdiction; that must affirmatively appear by sufficient evidence or proper averment in the record, or their judgments will be deemed void on their face."

Also see *Kalb* v. *Feuerstein*, 308 U.S. 433, 439 (1940) ("The States cannot, in the exercise of control over local laws and practice, vest State courts with power to violate the supreme law of the land." (Footnote omitted.)). In the footnote numbered 12 from the case *Kalb* v. *Feuerstein*, 308 U.S. 433 (1940), the Supreme Court explained that the issue of whether a state court decision is void ab initio arises from cases unrelated to bankruptcy. Also see *Moore* v. *Dempsey*, 261 U.S. 86 (1923); *Johnson* v. *Zerbst*, 304 U.S. 458, 468 (1938) ("If this requirement of the Sixth Amendment is not complied with, the court no longer has jurisdiction to proceed."); and, *Frank* v. *Mangum*, 237 U.S. 309, 327 (1915) wherein the Supreme Court stated:

> ". . .[A]bsolutely void for want of jurisdiction in the court that pronounced it, either because such jurisdiction was absent at the beginning, or because it was lost in the course of the proceedings . . . ."

Also see *Durfee* v. *Duke*, 375 U.S. 106, 110, 114 (1963), for a discussion of the "rule of finality of jurisdictional determinations" with respect to courts of general jurisdiction (as opposed to

courts of special and limited jurisdiction); and, *State* v. *Bushoug*, 109 N.E.2d 692, 694, 695 (Ohio 1951). Note in *Sherrer* v. *Sherrer*, 334 U.S. 343, 357-358 (1948), Justice Frankfurter of this Supreme Court stated in an dissenting opinion:

> "It would certainly have been easier if from the beginning the Full Faith and Credit Clause had been construed to mean that the assumption of jurisdiction by the courts of a State would be conclusive, so that every other State would have to respect it. But such certainly has not been the law since 1873. *Thompson v. Whitman*, 18 Wall. 457, 21 L.Ed. 897 . . . ."

Also see *Grignon's Lessee* v. *Astor*, 43 U.S. 319, 341 (1844) ("That applies to 'courts of special and limited jurisdiction, which are created on such principles that their judgments, taken alone, are entirely disregarded, and the proceedings must show their jurisdiction"); and, *McCormick* v. *Sullivant*, 23 U.S. 192, 199-200 (1825), ("inferior Courts, in the technical sense of those words, whose judgments, taken alone, are to be disregarded").

Thus, this Supreme Court has ruled that "courts of a special and limited jurisdiction" "must show their jurisdiction" or "their judgments, taken alone, are entirely disregarded". In other words, if a court (such as the subject New Hampshire state court) is of special and limited jurisdiction, its judgment is a nullity if the said court does not have jurisdiction. Also see *Coleman Bros. Corp.* v. *City of Franklin*, 58

F.Supp. 551, 554 (N.H. 1945) wherein the court stated:

> "The want of jurisdiction in any tribunal renders its proceedings void and when the want of jurisdiction is shown by the record and proceedings themselves, it may be taken advantage of at any time."

Also see *Patterson* v. *Patterson*, 306 F.3d 1156, 1159 (1st Cir. 2002) ("In New Hampshire, '[t]he probate court is not a court of general jurisdiction'"); and, *State* v. *Moquin*, 105 N.H. 9, 13, 191 A.2d 541, 544-545 (1963) where the dissent noted in part that:

> "Unlike the district courts of Massachusetts which are courts of 'general and superior jurisdiction' (citation omitted) . . . the municipal courts of New Hampshire have limited jurisdiction . . . ."

Also note the language of the trial court herein: "Although this court may be one of inferior rather than general jurisdiction". (A-6) In order to understand the basis of this exception, it is most important to understand that any decisions from the state courts in the State of New Hampshire related to the subject children are void as a matter of law. As this Supreme Court is well aware, lack of jurisdiction over the subject-matter cannot be waived. Lack of jurisdiction over the subject-matter cannot even be stipulated to by willing adverse parties to an action. Accordingly, the father contends friendly states such as the State of Vermont and/or the Commonwealth of Virginia cannot dictate and/or rule and/or

suggest that the subject trial court in the State of New Hampshire had subject-matter jurisdiction when, in fact, said New Hampshire court did not have subject-matter jurisdiction.

In order to properly analyze the issue of said void judgment, it is necessary to venture into the maze of facts. By way of background, on or before October 1, 2000, Kelly moved into the State of Vermont. In accordance with an existing Virginia custody order, beginning since at least October 6, 2000, the subject children had lived with Kelly in Vermont from at least 6:00 P.M. on Friday, October 6, 2000 until school started at approximately 8:00 A.M. on Monday, October 9, 2000 and from 6:00 P.M. on Friday, October 13, 2000 until school started at approximately 8:00 A.M. on Monday, October 16, 2000. Accordingly, when Kelly filed a petition to modify a custody order in New Hampshire on October 16, 2000 (and prior thereto), the children were living in both Vermont and New Hampshire.

Said custody Order of the Circuit Court of Fairfax County, Virginia states in part that the parties "shall have joint physical and legal custody of their minor children". Thus, while the mother was exercising her joint physical and legal custody of their minor children and living in Vermont, said minor children were living in Vermont. Because Kelly was living with the subject children in Vermont in October 2000 prior to the filing by the mother of her Ex Parte Petition to Bring Cause Forward and Modify on October 16, 2000, the State of New Hampshire was not a "home State" as defined by 28 U.S.C. 1738A(b)(4) on October 16, 2000. Accordingly, it is clear that

the State of New Hampshire was not a "home State" of the children "on the date of the commencement of the proceeding". Also see 28 U.S.C. § 1738A(c)(2)(A)(i).

The father left the State of New Hampshire by the end of day of December 20, 2000. There was no contestant (a "contestant" is defined as "a person, including a parent or grandparent, who claims a right to custody or visitation of a child") living in the State of New Hampshire at the end of the day of December 20, 2000. The father's daughter, Christina, had been unlawfully living with her mother in the State of Vermont. The sons, Peter and Christopher, were living in the Commonwealth of Virginia with their father until Kelly unlawfully took said boys from the Commonwealth of Virginia to the State of Vermont under Kelly's right of visitation and failed to return said boys according to the custody Order of the Circuit Court of Fairfax County, Virginia. Accordingly, after December 20, 2000, the State of New Hampshire no longer could even be considered a "home State" pursuant to 28 U.S.C. § 1738A(c)(2)(A)(ii) because no one was left in the State of New Hampshire.

Thus, any orders issued by the State of New Hampshire after December 20, 2000 are clearly void for lack of subject-matter jurisdiction. Title 28 U.S.C. § 1738A(c)(2)(A)(ii) requires that "a contestant continues to live in such State".

By and through violations of 28 U.S.C. § 1738A by the various States and the erroneous interpretations of 28 U.S.C. § 1738A by the various state courts, Kelly has denied the father his right to even see his youngest son since

January 5, 2001 up to at least the date of the filing of the instant petition for writ of certiorari. In summary, Kelly first violated 28 U.S.C. § 1738A(e) by obtaining an ex parte order on October 16, 2000 that in effect took away the father's daughter. Thereafter, on January 3, 2001, Kelly again violated 28 U.S.C. § 1738A(e) by obtaining another an ex parte order that in effect took away Mitrano's two sons. This ex parte order was also issued in the State of New Hampshire after the State of New Hampshire no longer had subject-matter jurisdiction.

There is no dispute by and through the custody order of the Circuit Court of Fairfax County, Virginia, that the Commonwealth of Virginia "made a child custody or visitation determination" consistent "with the provisions of" 28 U.S.C. § 1738A. Section 20-108 of the Code of Virginia provides that the Commonwealth of Virginia shall continue to have jurisdiction over the custody order of the Circuit Court of Fairfax County, Virginia. The father currently is a resident of the Commonwealth of Virginia. The mother is currently living in the State of Maryland. The children's paternal grandparents, who are contestants, have been residents of the Commonwealth of Virginia since 1972. The Commonwealth of Virginia has continuing jurisdiction pursuant to 28 U.S.C. §§ 1738A(c)(2)(E) and 1738A(d). The father therefore contends that the Commonwealth of Virginia had and has continuing jurisdiction based upon the father's residence in the Commonwealth of Virginia and/or the paternal grandparents' residence in the Commonwealth of Virginia. See

the discussions about the Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA) contained in 32 Family Law Quarterly 267, 342 (1998), wherein it is stated with reference to said Uniform Child-Custody Jurisdiction and Enforcement Act "that a remaining grandparent . . . should not suffice to confer exclusive, continuing jurisdiction". Contrary to said UCCJEA, 28 U.S.C. § 1738A clearly provides that a remaining grandparent does in fact suffice to confer exclusive, continuing jurisdiction.

Another case discussing this issue is *Clarke* v. *Clarke*, 126 N.H. 753, 755, 758, 496 A.2d 361, 363, 365 (1985), wherein the court stated:

> "Critical to our analysis of the issue of jurisdiction presented here is the recognition that this case involves modification of an existing custody order and not formulation of an initial decree. (Citations omitted.)
>
> . . .
>
> "Unless there has been a final order by an out-of-state court declining jurisdiction to modify its custody decree, the courts of New Hampshire will not assume jurisdiction to modify such a decree."

In addition to the court in the State of New Hampshire not following the above-quoted language from its own Supreme Court of New Hampshire, said court also ignored the language in *Howard* v. *Howard*, 124 N.H. 267, 273-274, 469 A.2d 1318, 1322 (1983) that temporary

changes after a permanent change are not to granted absent exceptional cases.

Thus, it is clear that New Hampshire was not a "home State" on the dates that Kelly filed the petitions to modify the custody order from the Commonwealth of Virginia because the children had been living in Vermont part of the time with Kelly prior to the filing of the petitions. See *Neger* v. *Neger*, 93 N.J. 15, 32-33, 459 A.2d 628, 637-638 (1983); *Johnson* v. *Johnson*, 26 Va. App. 135, 149, 493 S.E.2d 668, 675 (1997); and, *St. Andrie* v. *St. Andrie*, 473 So.2d 140, 144 (La. 1985) ("the child was in fact shuttled back and forth between Georgia and Louisiana . . . Therefore, it is clear that the child has no 'home state'."). Also see 45 Hastings L.J. 1329, 1344 (July 1994) ("A child in a joint custody situation might have two established homes.") and *Matter of Adoption of Child by T.W.C.*, 636 A.2d 1083, 1088 (N.J. 1994) ("The jurisdictional requirements of the PKPA, of course, preempt those of the UCCJA").

Because the State of New Hampshire was not a "home State" on the dates the petitions were filed by the mother, the interpretation of the following language contained in 28 U.S.C. § 1738A(c)(2)(A) is critical:

> "(A) such State (i) is the home State of the child on the date of the commencement of the proceeding, or (ii) had been the child's home State within six months before the date of the commencement of the proceeding and the child is absent from such State because of his removal or retention by a contestant or for other

> reasons, and a contestant continues to live in such State;"

Note that in interpreting the language "and a contestant continues to live in such State", this Supreme Court must also consider the statute as a whole. Note that the language is different than the words "on the date of the commencement of the proceeding" that are in the beginning of above-quoted language of 28 U.S.C. § 1738A(c)(2)(A). Also note the difference in words contained in 28 U.S.C. § 1738A(d) that "such State remains the residence of the child or of any contestant". Thus in interpreting the language "and a contestant continues to live in such State", this Supreme Court should find that the plain language of said words means that the State of New Hampshire no longer had jurisdiction when all the contestants stopped living in the State of New Hampshire. In the *Matter of Guardianship of Walling*, 727 P.2d 586, 590 (Okl. 1986), the court discussed the language stated above and stated:

> "Paragraph 1.a also does not apply because the children were not in the state at the time the commencement of the proceeding. Furthermore, paragraph 1.b is not applicable because of the requirement of having a 'person acting as parent' continued to live in the state . . ."

Note that in discussions about the Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA) contained in 32 Family Law Quarterly 267, 343 (1998), it is stated with reference to said

Uniform Child-Custody Jurisdiction and Enforcement Act that:

> "If State A had jurisdiction under this Section [UCCJEA] at the time a modification proceeding was commenced there, it would not be lost by all parties moving out of the state prior to the conclusion of proceeding . . . ."

In comparison, the language of 28 U.S.C. § 1738A provides that jurisdiction is divested by all parties moving out of the state prior to the conclusion of the proceedings under 28 U.S.C. § 1738A(c)(2)(A)(ii). Also note *Kalb* v. *Feuerstein*, 308 U.S. 433, 438-439 (1940) wherein this Supreme Court discussed the concept of a state court being divested of jurisdiction.

Accordingly, any orders issued by the State of New Hampshire after December 20, 2000 would be void for lack of subject-matter jurisdiction pursuant to 28 U.S.C. § 1738A. *Also see Badwell* v. *Brooks*, 141 N.H. 508, 512, 686 A.2d 1179, 1182 (1996) ("court's jurisdiction to award custody is purely statutory").

The interpretation of 28 U.S.C. § 1738A is a question of law. Note that in *Thompson* v. *Thompson*, 484 U.S. 174 (1988) this Supreme Court ruled that 28 U.S.C. § 1738A is only a full faith and credit statute and does not create a federal right of action. The State of New Hampshire clearly did not have subject-matter jurisdiction to modify the custody order from the Commonwealth of Virginia. See *Eichelberger* v. *Eichelberger*, 2 Va.App. 409, 412, 345 S.E.2d 10, 12 (1986); *Johnson* v. *Johnson*, 26 Va. App. 135,

146, 149, 493 S.E.2d 668, 673, 674 (1997); and, *Mebert* v. *Mebert*, 444 N.Y.S.2d 834, 837 (1981).

Arguendo, even if New Hampshire had jurisdiction under 28 U.S.C. § 1738A (which the father steadfastly denies), the ex parte New Hampshire order dated January 3, 2001 that dealt with the father's sons would be void because no notice whatsoever was given as required under 28 U.S.C. § 1738A. See 28 U.S.C. § 1738A(e). See *Ex Parte Raywood*, 549 So.2d 103, 104 (Ala. 1989) wherein the court stated: "we find that the Louisiana ex parte order was not made consistently with the PKPA and is not entitled to full faith and credit by the courts of Alabama"; also *see Joel M.* v. *Karen M.*, 507 N.Y.S.2d 369, 371 (1986) wherein the court stated:

> "The sole issue presented in this enforcement proceeding is whether or not the Superior Court of the State of New Hampshire in making the ex parte temporary order of custody was exercising jurisdiction substantially in conformity with the PKPA and UCCJA. Because neither the respondent-mother nor the respondent-maternal grandmother who has physical custody of the children were afforded any notice whatsoever-much less an opportunity to be heard, this Court holds and determines that the New Hampshire ex parte order dated October 2, 1986 is not entitled to full faith and credit under the PKPA or the UCCJA. (See *Sherry Ann F.* v. *Bennet S.*, 131

Misc.2d 854, 502 N.Y.S.2d 383 (Fam.Ct., Scho.Co., 1986))."

Another reason not to recognize the New Hampshire orders are that said orders are void because they are the result of sham proceedings in that the very least there is a willful failure of the Lebanon Family Division to follow the controlling law. The Lebanon Family Division in the State of New Hampshire refuses to recognize the father's right to basic due process under the constitution of the United States of America. See *Moore* v. *Dempsey*, 261 U.S. 86, 91 (1923) ("whole proceeding is a mask"). Also note that Mitrano had no right of appeal from the New Hampshire state court custody order judgment. See *Lynk* v. *LaPorte Superior Court No. 2*, 789 F.2d 554, 565 (7th Cir. 1986) wherein the court stated:

> ". . . [I]t seems inconceivable for example that due process would be interpreted today to allow a state to execute a criminal defendant without giving him any right to appeal from his conviction and sentence. Perhaps it is only a little less inconceivable that a state would be allowed to deny a person a divorce to which he was entitled as a matter of substantive right, on the basis of an unappealable decision of a judge of its divorce court . . . ."

Moreover, the amount of child support awarded is clearly excessive. (A-3) ("$1,406.00 per week, plus an additional $300.00 per week for medical and dental fees" currently for one child, Christopher, who the petitioner has not been

allowed to see since January 5, 2001.) See *Heins* v. *Heins*, 783 S.W.2d 481, 483 (Mo.Ct.App. 1990) ("Certainly support payments must be limited to the demonstrable needs of the party receiving support and not to provide an accumulation of capital."); and, *Smith* v. *Smith*, 341 Ark. 590, 19 S.W.3d 590, 594-595 (2000) ("child support is not to provide for the accumulation of capital by children, but is to provide for their reasonable needs"). Hence, this Supreme Court should rule that the custody order of the trial court is void.

The Dismissal by the New Hampshire Supreme Court was Arbitrary and Capricious

The Supreme Court for the State of New Hampshire stated that it was dismissing petitioner's appeal before it for failing to file a brief. (A-1) Although petitioner did in fact file a brief which petitioner believes met the requirements of the Rules of the Supreme Court for the State of New Hampshire, the Supreme Court for the State of New Hampshire stated in conclusory fashion that:

> ". . . [T]he court strikes Mr. Mitrano's brief. Consequently, the appeal is dismissed . . . ." (A-1)

The petitioner contends that he should not be deprived of his property and denied his rights to due process under the Constitution of the United States under the additional pretext that his brief filed before Supreme Court for the State of New Hampshire was in essence thrown out the door of the courthouse. See *Ford* v. *Georgia*, 498 U.S. 411, 423 (1991) ("Novelty in procedural

requirements cannot be permitted to thwart review in this Court"). Note that the brief of the petitioner before the Supreme Court for the State of New Hampshire was within the page limitation rules of said Court; it appears that said Court found the typeface unacceptable. Petitioner contends that the typeface complied with the rules of said Supreme Court for the State of New Hampshire. Also see *Parrot* v. *City of Tallahassee, Fla.*, 381 U.S. 129, 129 (1965) (petition before state court dismissed on procedural ground did not bar review by this Supreme Court); and, *National Ass'n for Advancement of Colored People* v. *Alabama ex rel. Flowers*, 377 U.S. 288, 294, 297 (1964) wherein this Supreme Court stated:

> "The Supreme Court of Alabama based its decision entirely on the asserted failure of the Association's brief to conform to rules of the court. Although it referred to Rule 9 of its Rules, which concerns the form of an appellant's brief, (footnote omitted) the Supreme Court gave no indication of any respect in which the Association's brief fell short of the requirements of that Rule . . .
>
> . . .
>
> ". . . The consideration of asserted constitutional rights may not be thwarted by simple recitation that there has not been observance of a procedural rule with which there has been compliance in both substance and form, in every real sense . . . ."

Also see *National Ass'n for Advancement of Colored People* v. *State of Ala., ex rel. Patterson*, 357 U.S. 449, 457-458 (1958) where this Supreme Court stated:

> ". . . Novelty in procedural requirements cannot be permitted to thwart review in this Court applied for by those who, in justified reliance upon prior decisions, seek vindication in state courts of their federal constitutional rights . . . ."

Accordingly, this Supreme Court has the authority to hear this case. It would be another grave injustice to allow the courts in the State of New Hampshire to take away the property of the petitioner without due process.

Conclusion

For these reasons, a writ of certiorari should issue to review the judgment of the Supreme Court of the State of New Hampshire.

Respectfully submitted,

Peter Paul Mitrano
Pro se[1]
4912 Oakcrest Drive
Fairfax, Virginia 22030
Petitioner

Dated: August 2006.

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1. The petitioner, Peter Paul Mitrano, is a member of the Bar of this Court and other courts.

APPENDIX

THE STATE OF NEW HAMPSHIRE
SUPREME COURT

In Case No. 2005-0664, In the Matter of Peter P. Mitrano and Virginia L. Mitrano, the court on May 17, 2006, issued the following order:

Attorney Donald L. Smith having filed an appearance for Virginia Mitrano, Attorney Susan Hankin-Birke's motion to withdraw as counsel is granted.

Peter P. Mitrano's motion to seal financial information and appendix to his brief contain, among other documents, copies of financial affidavits. RSA 458:15-b, I, makes all financial affidavits filed in annulment, divorce and separation proceedings confidential. Accordingly, the motion and appendix have been placed in a confidential file. See Sup. Ct. R. 12(1)(b)(5). Mr. Mitrano's revised motion to seal financial information is, therefore, moot.

After review of Peter P. Mitrano's revised brief and his response to the March 3, 2006, show cause order, the court strikes Mr. Mitrano's brief. Consequently, the appeal is dismissed. See Rule 16(12) (failure of appealing party to file brief will result in dismissal of appeal).

Appeal dismissed.

Broderick, C.J., and Dalianis, Duggan and Galway, JJ., concurred.

Eileen Fox,
Clerk

Distribution:
Lebanon Family Division 2000-M-0193
Honorable Lawrence A. MacLeod, Jr.
Mr. Peter Paul Mitrano
Susan Hankin-Birke, Esquire
Donald L. Smith, Esquire
File

STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH - LEBANON FAMILY DIVISION

GRAFTON, SS. Case No. 2000-M-193

IN THE MATTER of PETER PAUL MITRANO and VIRGINIA L. KELLY

ORDER

A hearing was held in this matter on July 25, 2005. The respondent has requested that the court issue a writ of execution on judgments issued by this court against the petitioner for unpaid child support, health care expenses and attorneys' fees. The respondent was present for the hearing and represented by her attorney of record, Susan Hankin-Birke, Esquire. The petitioner appeared through counsel. He was represented by R. Peter Decato, Esquire. After hearing arguments from both parties, the court took the matter under advisement and now finds and rules as follows.

The petitioner was ordered on September 27, 2002 to pay child support to the respondent in the amount of $1,406.00 per week, plus an additional $300.00 per week for medical and dental fees for the parties' children, which then totaled $2,533.41. In addition, petitioner was ordered to pay other costs and expenses totaling $44,253.41. The respondent was granted an attachment in the amount of $47,000.00 on the petitioner's Hanover, New Hampshire real estate as well.

RSA 458:17 VII states: "All support payments ordered or administered by the court under this chapter shall be deemed judgments when due and payable. Such judgments shall be given full faith and credit by all jurisdictions of this state." Interest is due and payable on judgments for child support in New Hampshire, with the annual rate of interest established pursuant to RSA 336:1. See In the Matter of Giacomini and Giacomini, 151 N.H. 775 (2005).

On December 10, 2002 the petitioner was found in contempt of court for his failure to comply with this court's order of September 27, 2002. The petitioner's accrued child support arrearage as of December 10, 2002 was $14,560.00. He was ordered at that time to pay attorneys' fees to the respondent in the amount of $1,600.00. In addition, the respondent was granted a second attachment in the amount of $100,000.00 on petitioner's Hanover real estate. The attachment was issued to secure payment of the petitioner's past and future child support as well as medical and dental reimbursement obligations and respondent's additional legal fees and costs.

The court granted a third attachment on the petitioner's Hanover real estate in the amount of $400,000.00 at respondent's request by ordered (sic) dated July 11, 2003. The petitioner had incurred unpaid medical and dental expenses for the parties' children at that time of $2,827.80.

The division of child support services gave notice to this court that the petitioner's accumulated arrearage was $100,528.97 as of May 1, 2004. The interest on petitioner's child

support from January 1, 2003 through June 28, 2005 is $8,287.92, calculated at the various yearly statutory rates for that period of time.

The petitioner also owes respondent additional arrearages for unpaid medical and dental expenses in the sum of $4,348.60 from March 31, 2003 through June 20, 2005 and additional attorneys' fees of $517.58 since December 10, 2002.

The petitioner has paid the respondent a total of $14,560.00, which payment was applied to the period of September 27, 2002 through December 14, 2002.

As of July 23, 2005 the petitioner had failed to pay respondent the adjudicated sums of $243,357.39, plus interest of $8,287.92.

Pursuant to RSA 490-D:3, this court has "the powers of a court of equity in cases where subject matter jurisdiction lies with the judicial branch family division", including cases for divorce, alimony and child support. RSA 498 describes the powers of a court of equity, which includes the power to issue writs of attachment under RSA 498:16.

The petitioner objects to the respondent's request for a writ of execution. He asserts that the family division, as a court of limited jurisdiction, lacks authority to issue such writs, because they are statutorily created remedies specifically returnable only to the superior and districts courts. (See RSA 527:2 and 527:5). As such, the petitioner argues that a litigant who has obtained a judgment for unpaid child support issued by a family division court must first bring

suit on his judgment in the superior court before he can obtain a writ of execution.

This court disagrees with the petitioner's assertions, and holds that it has inherent power to enforce its judgments by use of its contempt powers and by such writs as may be necessary to carry its judgments into effect. Although this court may be one of inferior rather than general jurisdiction, its jurisdiction includes both actions at law and in equity. As such, this court has a duty, and the inherent power, to make its decrees both effective and operative, and it may do so by writ of execution or bill in equity, as the same may be necessary.

Respondent's motion for writ of execution is granted.

SO ORDERED, this 15th day of August 2005.

_____/s/_____
Lawrence A. MacLeod, Jr.
Presiding Justice